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defense.<sup>13</sup> If the result necessarily depended upon deciding which explanation of the servant's right to assume the risk is correct, the prospect of a uniform rule would not be encouraging. But when it is once conceded that as a matter of fact to allow the defense permits an effective encouragement of the master's noncompliance with the statute, it becomes entirely immaterial upon what theory the defense, if admissible, is based. Any effective encouragement to violate the law, whether it is founded upon agreement or consent, seems equally against public policy. The result in the principal case, even disregarding the view in its jurisdiction that assumption of risk is based on contract,<sup>14</sup> therefore seems sound. But it is undeniable that this and the decisions in other States to the same effect depend largely upon a willingness to limit where possible the strict application of the doctrine of assumption of risk, which indicates that, even under present conditions, the courts are not entirely irresponsive to the popular judgment of what the law ought to be.<sup>15</sup>

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CORPORATE DOMICILE.—Whether a fictitious body can have either residence or domicile is questionable, for it requires considerable mental exertion to visualize so cloudy an entity and permanently locate it in one place.<sup>1</sup> Admitting, however, that there are theoretical objections, it is often important to do so in order to fix the *situs* of its rights and liabilities.<sup>2</sup> Being a mere creature of the law, the corporation traces its domicile of origin to the jurisdiction which has given it birth,<sup>3</sup> and a different domicile cannot be afterwards acquired, since corporate existence is, by the terms of its creation, limited to the territory of the creating sovereignty.<sup>4</sup> The fact that the corporation is thus narrowly confined would seem in theory to prevent even its presence in any other jurisdiction, and the acquisition of foreign residence would, therefore, be impossible. The courtesy of other jurisdictions, however, permits the projection of the corporate entity beyond the bounds of its origin in order to conduct operations in foreign States practically as an individual,<sup>5</sup> but subject to any limitations which

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<sup>13</sup>*D. & R. G. R. R. Co. v. Norgate supra*; *D. & R. G. R. R. Co. v. Gannon supra*; *Osterholm v. Mining Co. supra*.

<sup>14</sup>*Dowd v. Railway Co.* (1902) 170 N. Y. 459.

<sup>15</sup>The opinion of the court by Cullen, Ch. J., concludes as follows: "There seems at the present day an effort by constitutional amendment to render a master liable to his employee for injury received in his employment, though the master has been guilty of no fault whatever, and I feel that such effort is in no small measure due to the tendency evinced at times by the courts to relieve the master, though concededly at fault, from liability to his employee on the theory that the latter assumed the risk of the master's fault."

<sup>1</sup>Minor, *Conf. of Laws* § 67.

<sup>2</sup>Savigny, *Conf. of Laws*, 63.

<sup>3</sup>*Bank of Augusta v. Earle* (1839) 13 Pet. 519.

<sup>4</sup>*Duke v. Taylor* (1896) 37 Fla. 64; *Holbrook v. Ford* (1894) 153 Ill. 633; *Beale, For. Corp.* § 71.

<sup>5</sup>*Demarest v. Flack* (1891) 128 N. Y. 205. In *Land Grant R. R. Co. v. County Comm.* (1870) 6 Kan. 245, the Kansas court very properly excluded a corporation chartered by Pennsylvania to do business in any State but Pennsylvania.

the foreign jurisdiction may impose.<sup>6</sup> It is only natural, then, for the courts to assume jurisdiction and give the corporate entity a status analogous to residence.<sup>7</sup> The location of this residence among the sub-divisions of the State depends in the first instance on the will of the domestic sovereign, for there is no reason why it could not require the selection of one definite residence as a condition of the right to do business in the State.<sup>8</sup> If no such requirement is made, it would seem that a foreign corporation should be governed by the rules applicable to a domestic corporation, which is usually considered resident wherever it has an established office or place for the transaction of business,<sup>9</sup> although some cases limit its residence to the place where the principal office is located.<sup>10</sup>

In the absence of any stipulation imposed by the creating sovereignty, the location of the domicile of a domestic corporation is determined by the considerations applicable to individuals. The corporation can choose any domicile which it desires,<sup>11</sup> and can change it at any time by properly effecting its purpose.<sup>12</sup> The difficulty in every case is to ascertain corporate intention and to determine which act portrays this design. Various rules have been formulated, locating corporate domicile at, the place (1) where its directors meet and its financial operations are conducted,<sup>13</sup> (2) where its principal office is situated,<sup>14</sup> (3) where its general management is conducted,<sup>15</sup> or (4) where its business operations are carried on.<sup>16</sup> Any choice between these rules is at best arbitrary, but the most logical course is to domicile the corporation at the place from which effective control is exercised. While its agents may carry on operations elsewhere, here,

<sup>6</sup>Paul v. Virginia (1868) 8 Wall. 168.

<sup>7</sup>Hayden v. The Androscoggin Mills (1879) 1 Fed. 93; Harding v. Chicago, etc. R. R. Co. (1883) 80 Mo. 659; Carron Iron Co. v. MacLaren (1855) 5 H. L. Cas. 416, 449. In this case it was suggested that a corporation "may for purposes of jurisdiction be deemed to have two domiciles" but the question was really only one of jurisdiction and the decision, therefore, merely allows the corporation both a Scotch and an English residence. See N. Y. Life Ins. Co. v. Best (1872) 23 Oh. St. 105.

<sup>8</sup>See Boston Inv. Co. v. City of Boston (1893) 158 Mass. 461.

<sup>9</sup>Pond v. Hudson River R. R. Co. (N. Y. 1858) 17 How. Pr. 543; Bristol v. Chicago etc. R. R. Co. (1854) 15 Ill. 436. Glaize v. S. C. R. R. Co. (S. C. 1846) 1 Strob. L. 70, contains a *dictum* that a corporation may be sued anywhere in the jurisdiction which created it.

<sup>10</sup>Conn. etc. R. R. Co. v. Cooper (1858) 30 Vt. 476; Thorn v. Central R. R. Co. (1856) 26 N. J. L. 121.

<sup>11</sup>Middletown Ferry Co. v. Middletown (1873) 40 Conn. 65; see Stickle v. Liberty Cycle Co. (N. J. 1895) 32 Atl. 708.

<sup>12</sup>Austen v. Hudson River Tel. Co. (N. Y. 1893) 73 Hun 96; Stinson v. Cemetery Co. (N. J. 1898) 40 Atl. 116.

<sup>13</sup>Frick Co. v. Norfolk etc. R. R. Co. (1898) 86 Fed. 725.

<sup>14</sup>Orange & Alex. R. R. Co. v. City Council of Alexandria (Va. 1867) 17 Gratt. 176; Pac. S. S. Co. v. Comm. (N. Y. 1874) 47 How. Pr. 164.

<sup>15</sup>Grundy Co. v. Tenn. Coal Co. (1895) 94 Tenn. 295; Middletown Ferry Co. v. Middletown *supra*.

<sup>16</sup>Woodsum Steamboat Co. v. Sunapee (1908) 74 N. H. 495; see Oswego Starch Factory v. Dolloway (1860) 21 N. Y. 449.

surely, the corporate entity is present represented in tangible form by the persons who control its affairs.<sup>17</sup>

It is, however, entirely competent for the creating State to fix local domicile as one of the terms of the right to exist.<sup>18</sup> Whether it has in fact done so is often open to inquiry. If the business to be conducted is of a purely local nature the legislative intention to assign domicile to a certain locality is either expressed or clearly implied.<sup>19</sup> Where on the other hand the business is of a general character the legislative intention is not so easily discovered. An instance is presented by a recent case, *Inter-Southern Life Ins. Co. v. Milliken* (Ky. 1912) 149 S. W. 875. A corporation, as required by the enabling act, in its charter designated an unincorporated village near Louisville as its domicile. Directors' meetings were nominally held there, but the entire corporate business was conducted in Louisville. The court admitted that the charter specification was conclusive if in good faith,<sup>20</sup> but held that inasmuch as it was used merely to evade taxation, it was the real intention of the corporation to be domiciled at Louisville. In such a situation there are two possible interpretations of the statute requiring the designation of domicile in the charter. First, if the legislature meant to make corporate domicile certain and specific, it seems inevitable that the designation by the corporation is conclusive even when used to evade taxation.<sup>21</sup> Second, if the legislature were seeking a true and *bona fide* designation of corporate domicile, the courts should go behind the charter and ascertain the real domicile, disregarding a mere evasive statement in the charter.<sup>22</sup> The second view, followed by the principal case, is certainly more reasonable, and secures justice in every case while defeating an inequitable use of the statute.

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THE CONSTITUTIONALITY OF A LAW EXCLUDING ALIENS FROM THE LIQUOR BUSINESS.—A constitutional question which has received little adequate judicial determination is raised by the recent case of *Bloomfield v. State* (Oh. 1912) 99 N. E. 309, which decides that a statute

<sup>17</sup>Another test is possibly worthy of notice: Some one act may usually be selected as the principal corporate function, and it may be inferred that it was the corporate intention to be domiciled where this function is exercised. So a manufacturing corporation would be domiciled at its factory, see *Kennett v. Woodworth etc. Co.* (1895) 68 N. H. 432; *Oswego Starch Factory v. Dolloway supra*, a business or railway corporation at its principal office, *Orange & Alexandria R. R. Co. v. City Council of Alexandria supra*, and a holding company at the place where its directors' or stockholders' meetings are held. This test is, of course, open to the objection that it does not give a fixed guide but varies according to the nature of the corporation.

<sup>18</sup>*Western Trans. Co. v. Scheu* (1859) 19 N. Y. 408; *Pelton v. Trans. Co.* (1882) 37 Oh. St. 450; *cf. People ex rel. v. Barker* (N. Y. 1895) 87 Hun 341.

<sup>19</sup>*Booth v. Wonderly* (1873) 36 N. J. L. 250; *Savigny, Confl. of Laws*, 64.

<sup>20</sup>*City of Covington v. Standard Oil Co.* (1910) 137 Ky. 837.

<sup>21</sup>*Union etc. Co. v. Buffalo* (1880) 82 N. Y. 351; *Western Trans. Co. v. Scheu supra*; *Pelton v. Trans. Co. supra*; *cf. People ex rel. v. Barker supra*.

<sup>22</sup>*Ga. Fire Ins. Co. v. Cedartown* (1910) 134 Ga. 87; *Portsmouth v. Granage etc. Co.* (1907) 148 Mich. 230; *Detroit Trans. Co. v. Board of Assessors* (1892) 91 Mich. 382; *Woodsum Steamboat Co. v. Sunapee supra*.